

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 010

June 27, 1958

DEDUCTIONS: WASHINGTON STATE BUSINESS AND OCCUPATION TAX

Syllabus:

The Washington Business and Occupation Tax is deductible in computing net income under the Bank and Corporation Tax Law.

Advice is requested as to whether the State of Washington Business and Occupation Tax is deductible in computing net income under the Bank and Corporation Tax Law.

Section 8(c) of the former Franchise Tax Act (now Section 24345 of the Bank and Corporation Tax Law) excludes from the tax deduction taxes on or measured by income or profits.

The Washington business and occupation tax has been stated to be a tax for the act or privilege of engaging in business activity. The measure of the tax depends on the nature of the business taxed. For example, the tax on mining and manufacturing businesses is measured by the value of the products extracted or manufactured, such value being generally determined by the gross proceeds of sales; wholesalers and retailers are taxed upon the gross proceeds of sales; and various other business are taxed on what is termed "gross income".

It is particularly important to note that the "gross proceeds" and "gross income" referred to are computed without any deduction for cost of goods sold, materials used, labor costs, etc. Thus, the tax is measured essentially by gross receipts rather than income as the latter term is more commonly understood. For example, in interpreting the meaning of the word "income" in the 16th amendment to the U.S. Constitution, the Supreme Court looked to dictionaries in common use and the definition determined upon was that income may be defined as the gain derived from capital, from labor, and from both combined. This is the generally accepted legal and accounting definition.

Gross receipts do not in themselves necessarily represent gain because they do not take into consideration at least the initial costs of goods, labor or materials. Therefore, where the tax in question is not based on items of income as that term is generally conceived it is not an income tax and is, therefore, deductible under Section 8(c). (Now Section 24345 of the Bank and Corporation Tax Law)